UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

D-M PRODUCTS, INC.

Employer **Case** 6-RC-11883

and

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES OF THE UNITED STATES AND CANADA, DISTRICT COUNCIL 57, AFL-CIO

Petitioner

D-M PRODUCTS, INC.

Employer Case 6-RC-11886

and

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL UNION NO. 3, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION, ORDER AND DIRECTION OF ELECTION

Following a hearing in the above-captioned matters, the undersigned Regional Director issued a Decision, Order and Direction of Election on October 13, 2000, dismissing the petition in Case 6-RC-11883 and directing an election in Case 6-RC-11886.

The Petitioner in Case 6-RC-11883 filed a Request for Review of the Regional Director's Decision, Order and Direction of Election in the above-captioned matter. Thereafter, on November 22, 2000, the Board issued an Order Remanding the case to the Regional Director for a re-opening of the record, including a hearing, if necessary, for the purpose of receiving

additional evidence to determine whether, as found by the undersigned, the Employer no longer assigns work along craft lines, i.e. whether there is still a distinct group or number of employees who perform work only of the type covered by the Glaziers' prior collective bargaining agreement. Burns and Roe Services Corp., 313 NLRB 1307, 1308 (1994).

Accordingly, pursuant to the Order Remanding, a re-opened hearing was held before Patricia J. Daum, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.[1]

Upon the entire record[2] in this case, the Regional Director finds:

1. The hearing officer's rulings made at the re-opened hearing are free from prejudicial error and are hereby affirmed.

In Case 6-RC-11883, the Glaziers sought to represent a unit of all full-time regular glaziers and apprentice glaziers employed by the Employer. The evidence established that for many years the Employer had employed employees represented by the Glaziers to perform the work of glazing under a series of collective-bargaining agreements, the most recent of which expired on August 31, 2000, at which time all of the glazier employees of the Employer were permanently laid off. I found that the aforementioned collective-bargaining agreement was an 8(f) pre-hire agreement and that at its conclusion the Employer had no continuing obligation to recognize the Petitioner pursuant to the principles set forth in John Deklewa & Sons, 282 NLRB 1375 (1987). I further found that in the future the Employer would not employ any glaziers or members of the glaziers trade but would rely exclusively on iron workers to perform all of the construction work activities involved in its business. To this end, the record established that the

[1] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 l4th Street, N.W., Washington, D.C. 20570-000l. This request must be received by the Board in Washington by February 2, 2001.

[2] The Employer and both Petitioners herein filed timely briefs which have been duly considered by the undersigned.

Employer executed a new collective-bargaining agreement with the Iron Workers which now covered glazing work as well as other work traditionally performed by iron workers.[3] In this regard, I found that as of September 1, 2000, the work of glazing has been incorporated into the work of and assigned to the bargaining unit represented by the Iron Workers in its most recent collective-bargaining agreement with the Employer.[4] Accordingly, I found that the Glaziers unit had ceased to exist upon the expiration of the Glaziers' contract and the permanent layoff of the glazier employees. I therefore dismissed the petition in Case 6-RC-11883.[5]

The Board's Order remanding the case provides in relevant part:

> The relevant issue, in our opinion, is whether the Employer continued to operate along craft lines after the expiration of its Section 8(f) agreement with the Glaziers.
>
> Having carefully reviewed the record, we find insufficient evidence to determine whether, as found by the Regional Director, the Employer no longer assigns work along craft lines, i.e., whether there is still a distinct group or number of employees who perform work only of the type covered by the Glaziers' prior collective bargaining agreement. Burns and Roe Services Corp., supra.

At the hearing on remand, evidence was presented concerning five job projects on which employees of the Employer performed work which, prior to September 1, 2000, would have been assigned to glazier employees. Two of these projects, the Mellon Bank Customer Service Center building and the Allegheny County Jail renovation project, were major jobs which had commenced well prior to September 1, 2000, and were ongoing at the time of the hearing. For

[3] From about 1988 to the present, the Employer has agreed to be bound by the terms of a multi-employer collective-bargaining agreement between the Iron Workers and the Iron Worker Employers Association of Western Pennsylvania (Association), the most recent of which is effective from June 1, 2000, to May 31, 2003.

[4] This Agreement is the aforementioned collective-bargaining agreement between the Iron Workers and the Association.

[5] I also directed an election in the Iron Worker unit in Case 6-RC-11886 and devised an eligibility formula consistent with the principles set forth in Daniel Construction Co., 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967). See also Steiny & Co., 308 NLRB 1323 (1992).

purposes of the hearing, records on all projects running through December 7, 2000, were presented into evidence.

A third job project, Wean Hall, at Carnegie Mellon University, was a small project which involved just six days of work for two men in October 2000. The fourth project involved Good Samaritan Hospital located in Conemaugh, Pennsylvania, most of the work on which was completed prior to September 2000. The final project involved construction of a glass atrium-like conference center at West Penn Hospital, which began in approximately July 2000, and is continuing.

As to the Mellon Customer Service Center project, Employer Field Supervisor Michael Stroupe testified that he was in charge of that project, including, among other things, the assignment of employees to various job duties. According to Stroupe, as of September 1, 2000, when all of the Employer's prior glazier employees had been laid off, there remained a mixed amount of work which traditionally would have been assigned to iron workers and to glaziers, respectively. Stroupe testified that all of the glazing work was assigned to iron workers who had already been working on the project, with only two exceptions (out of a total of 23 assigned to the project): iron workers E. Adams and R. Danko, who had not worked at the Mellon project before September 1, 2000, but were assigned to that project for periods of time in September and October 2000.[6]

Stroupe testified that he assigned employees to perform traditional glazing work after September 1, 2000, essentially on the basis of their availability at the time. Thus, if there was glazing work to be done and an iron worker had recently concluded an iron working project, Stroupe would simply shift him over to do the glazing task. Stroupe further testified that as to this and any other company project, none of the Employer's iron worker employees have had any specific training in glazing skills. He noted that many traditional iron worker skills overlap

[6] The record indicates that neither Adams nor Danko were new hires but rather that they had been assigned to other job sites prior to this time.

with those of glaziers and that, for the most part, iron workers and glaziers use the same tools. Moreover, on the projects discussed at the hearing on remand, the iron workers doing glazing work receive the same benefits as they did when performing iron worker work for the Employer.

In regard to the Allegheny Jail project which Stroupe also supervised, he testified that on that project most of the iron working work had been completed prior to September 1, 2000, and that at least "ninety-seven percent" of the work done after that date was traditional glazing work. Again, all of this work was assigned to and performed by iron workers, none of whom were newly hired by the Employer to perform this work. Stroupe also testified that, on this job project as well, employees were assigned to perform particular tasks on an as-needed basis, although on this job, as he had previously testified, almost all of the work to be done was what traditionally was glaziers' work.

With regard to the assignment of work, Stroupe did concede that, when assigning the "finesse work" on storefronts (a term referring generally to entryways, including the installation of glass doors) there were certain employees who were more skilled at this work. He named six employees whom he recalled doing this type of work at the Mellon Bank Customer Service Center jobsite and four others who were assigned to that work at the Allegheny County Jail project. However, Stroupe also testified that there was no portion of the glaziers work that he did not trust "just any Iron Worker" to perform, nor did he have a specific group of employees to call upon for that sort of assignment.

Stroupe's testimony generally was supported by voluminous employee records consisting of daily time sheets prepared for each job project and submitted by each foreman or supervisor showing the number of hours worked by each employee in various job categories. Stroupe, who prepared many of these daily sheets from which summaries, also in evidence, were prepared, confirmed their accuracy while conceding that he could not currently recall precisely what work task within a generally category a specific employee had performed on a specific day covered by the documents. However, he could, and did, describe in detail what sorts of tasks individual employees had performed during the overall course of the job projects.

As to the West Penn Hospital job project, iron worker Gary Weissert was foreman and in charge of that job, which began in July 2000. Weissert testified that the job, which involved the construction of an atrium with glass walls and roof, had all been performed by iron workers since September 1, 2000. The records indicate that of the 14 iron worker employees who worked on this project, six were employed both before and after September 1, 2000, two worked only prior to that date, and six other iron workers did not start on the job until various dates after September 1, 2000. Weissert, who assigned all of the work on this project, testified that he made assignments based on employee availability and not based on any particular skill in glazing work. He testified that, at one time or another, all of the iron workers performed all of the various tasks on the job, whether they were traditional iron worker duties, traditional glazier duties, or more general laborer-type unskilled tasks.

While extensive daily time sheet records and summaries were also placed in evidence concerning the Good Samaritan Hospital project in Conemaugh, Pennsylvania, no other evidence was received concerning this project. It appears that little, if any, traditional glazing work was performed on this job after September 1, 2000.

In terms of employees being assigned varying job tasks, the daily time sheet summaries reveal that, as noted previously at the Mellon project, only two employees, Adams and Danko, who worked after September 1, had not been employed prior to September 1 at that project doing traditional iron workers work. Of the two, Adams performed only glazing work at Mellon after being assigned to that location, while Danko performed both glazing and iron worker work during that time period. Adams worked a total of 160 hours and Danko worked a total of 144 hours on these tasks. Further, with respect to the Allegheny County Jail project, 11 of 17 iron workers employed on that project worked there only after September 1, 2000. Of these, nine: Sayers, Kelly, Brody, Czapiewski, Danko, Bernarding, Austin, Kopchak and Newman, had worked previously as iron workers at the Mellon project before September 1, 2000. Two employees, Lis and Adams, had worked before September 1 as iron workers at the West Penn project. Finally, at West Penn, additional iron workers were assigned after September 1, 2000,

to perform a wide variety of job tasks, and at Good Samaritan, two employees were added after September 1, 2000: Markilinski, who had done iron work at Mellon Bank, and Kovalosky, who did both types of work there.

There is no indication in the record that the Employer has hired any new employees since September 1, 2000, to perform traditional glazing work, nor is there any evidence that any of its iron worker employees have received any specialized instruction or training in glazing at any time. The record does indicate that there is some significant overlap in job skills, tools, and the type of work performed by iron workers and glaziers. Testimony at the original hearing indicated that the Iron Workers Union has recently expanded the description of its work jurisdiction in its collective-bargaining agreements, including the Association contract involved in this matter, to include traditional glazing work. It is also significant that, as the record reveals, a number of employers in this industry have taken the route being followed by this Employer in consolidating the work formerly done by separate Iron Worker and Glazier units into one Iron Worker-represented unit.

In Burns and Roe Services Corp., supra, 313 NLRB at 1308, the Board identified the requirements for finding a craft unit in the following terms:

> A craft unit is one consisting of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits and cross-training. (Footnotes omitted.)

The record developed at the hearing on remand in this case indicates that there is no group of employees of the Employer which meet these criteria. Thus, there is no group of

employees set apart in a separate department or with separate supervision who perform the tasks traditionally associated with the glaziers craft. No employees currently performing glazing tasks for the Employer have undergone separate training or apprenticeship for those functions, nor do they use specialized tools or equipment.

Nor does the record indicate that there is any definable group of employees who are singled out to be assigned glazing duties or who "perform work only of the type covered by the Glaziers' prior collective bargaining agreement". Rather, the record indicates that the Employer's iron worker employees are assigned to glazing tasks on an as-needed basis determined largely by the employees' availability at the time the task needs to be done. While one of the Employer's supervisors indicated that, for certain "finesse" tasks associated with the installation of glass doors, he found certain iron worker employees to be more skilled than others, the record does not indicate that such work was assigned exclusively to such individuals or that it has not been assigned to other employees in the past. Moreover, the record indicates that the Employer's work force is effectively integrated, since employees performing glazing tasks on one day may be assigned to iron worker duties the next day, and vice versa.

The work force on the job site is no longer functionally divided into sections or crews and it appears that job duties generally overlap more than would be the case in a traditional craft structure. There are no defined craft or jurisdictional lines among the workforce since September 1, 2000.[7]

[7] The Petitioner Glaziers reliance upon Schaus Roofing and Mechanical Contractors, Inc., 323 NLRB 781 (1997) is inapposite to the case at bar. In that case, unlike here, the Employer admittedly adhered to a system of formal apprenticeships, employees in one trade were unable to do the skilled work of other trades, and all skilled work was assigned on craft lines. Here, the record does not support any such conclusions. Moreover, while the Glaziers cite this case for the proposition that "though some employees performed unskilled work in other trades, the overlapping of duties in the lesser-skilled aspects of a trade does not preclude a craft unit", the evidence in the instant case does not support the assertion that the Employer is assigning most iron workers only to the "unskilled" aspects of glazing work, nor does the evidence support the implied suggestion that there are some ultra skilled craft groups among the Employer's employees who perform not only glazing work but only the most highly skilled glazing work.

Finally, the record indicates that since all of the Employer's employees are members of the Iron Workers collective-bargaining unit, they clearly share common interests with one another concerning terms and conditions of employment, including wages, benefits and other issues.

Accordingly, based on the above and having considered the matter in light of the Order Remanding, I conclude that there does not exist any "distinct group or number of employees who perform work only of the type covered by the Glaziers' prior collective bargaining agreement". Nor does it appear that the Employer any longer assigns work along craft lines, as did the employer in Burns and Roe Services Corp., supra. Accordingly, I hereby reaffirm my original Decision, Order and Direction of Election that the petition in Case 6-RC-11883 be dismissed.[8] I further find and conclude that the following employees in Case 6-RC-11886 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[9]

> All full-time and regular part-time pre and hand glaziers, curtain and window wall, metal and glass installers and sealers employed by the Employer; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

ORDER

IT IS HEREBY ORDERED that the petition in Case 6-RC-11883 be, and it hereby is, dismissed.

[8] The Petitioner Glaziers Union has indicated that it does not desire to proceed in the broader unit sought by the Petitioner Iron Workers, or in any other unit which may be found appropriate.

[9] Consistent with my original Decision, I find that it would effectuate the purposes of the Act to apply the Daniel eligibility formula in Case 6-RC-11886.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.[10] Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Additionally eligible are employees in the unit who have been employed for 30 days or more within the 12 months preceding the eligibility date for the election, or if they have some employment within those 12 months and have been employed 45 days or more within the 24 month period immediately preceding the eligibility date and who have not been terminated for cause or quit voluntarily prior to completion of the last job for which they were employed by the Employer. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[11] Those eligible shall vote whether

[10] Pursuant to Section l03.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to l2:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

[11] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB

or not they desire to be represented for collective bargaining by International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union No. 3, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 19th day of January 2001.

/s/Gerald Kobell
Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
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347-4080-0100
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1236 (l966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (l969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Supplemental Decision, Order and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room l50l, l000 Liberty Avenue, Pittsburgh, PA l5222, on or before January 26, 2001. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.